

SERVICE DATE - JUNE 23, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 206X)

NORFOLK AND SOUTHERN RAILWAY COMPANY--ABANDONMENT
EXEMPTION--IN MADISON COUNTY, IL

Decided: June 22, 2000

Norfolk Southern Railway Company (NS) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 7.5-mile line of railroad between milepost A-13.0 at Bluffs Junction to milepost A-20.5 at Troy Junction, in Edwardsville, Madison County, IL. Notice of the exemption was served and published in the Federal Register on August 16, 1999 (64 FR 44576-77). On September 14, 1999, a decision and notice of interim trail use or abandonment (NITU) was served, that reopened the proceeding to implement interim trail use/rail banking for the entire line under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and provided a 180-day period for the Madison County Metro-East Transit (Madison Transit) to negotiate an interim trail use/rail banking agreement with NS for the right-of-way involved in this proceeding. The 180-day period under the NITU expired on March 13, 2000.¹

By motion filed June 19, 2000, Madison Transit filed a request to extend the negotiation period for an additional 136 days (until July 27, 2000). Madison Transit states that it is negotiating to acquire the subject property and the Sub-No. 203X property in a single contract.²

¹ The September 14, 1999 decision also imposed environmental conditions that NS: (a) be prohibited from cutting any trees along the right-of-way during any salvage operations performed between April 1 and September 30; (b) cease salvage operations, if the eastern prairie fringed orchid is found, and consult with the U.S. Fish and Wildlife Service (FWS) and abide by FWS conditions for preservation of the orchid; and (c) consult with the Illinois Environmental Protection Agency and develop an acceptable method of disposing of old wood cross ties and other treated wood materials prior to salvage operations.

² The property at issue was the subject of a petition for exemption in Norfolk Southern Railway Company--Abandonment Exemption--in Madison and Bond Counties, IL, STB Docket No. AB-290 (Sub-No. 203X) (STB served Nov. 6, 1998). On February 3, 1999, a NITU was served in the Sub-No. 203X proceeding granting Madison County's request for its issuance for the portion of the right-of-way between milepost TS-410.91 and milepost TS-444.2. On March 17, 1999, an amended NITU was issued to implement interim trail use/rail banking for an additional portion of the right-of-way between milepost TS-410.91 and milepost TS-405.6. The
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Madison Transit also states that it has encountered delays in processing of a grant application which has resulted in delays in the negotiations. By facsimile dated June 20, 2000, NS stated that it has not consummated the abandonment and consented to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ Under the circumstances, further extension of the negotiating period is warrant. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for an additional 136 days (from March 13, 2000) to July 27, 2000.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The negotiating period under the NITU is extended to July 27, 2000.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

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negotiating period was extended to July 27, 2000, by decisions served July 30, 1999, and January 27, 2000.

³ See Rail Abandonment Supplement Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63 (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).